



California Fair Political Practices Commission

January 9, 1987

Steven R. Meyers
City Attorney
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

Re: Your Request for Advice
Our File No. A-86-325

Dear Mr. Meyers:

You have requested advice regarding San Leandro City Councilmember John E. Faria's duties under the conflict of interest provisions of the Political Reform Act.^{1/} This letter confirms advice I provided by telephone to Michael Riback of your office on January 2, 1986.

QUESTION

The San Leandro City Council is considering a development application to convert two existing vacant buildings into a retail, office, warehouse and light manufacturing complex. One of the prospective tenants of the complex is a wholesale cash and carry membership warehouse which sells a variety of nationally branded merchandise at low prices. As a part owner of a hardware store, is Mr. Faria prohibited from participating in the City Council's decision?

CONCLUSION

Councilmember Faria may not participate in the City Council's decision if the decision will have a reasonably foreseeable material financial effect on the hardware store in which he is part owner. We do not have before us sufficient facts to make this determination.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

FACTS

Mr. Faria is a 34% owner in Faria Brothers Hardware, Inc. ("Faria Brothers"). Faria Brothers had gross sales of approximately \$1.5 million in 1985. The primary product line carried by Faria Brothers is commercial and industrial hardware and specialty hard goods not generally stocked by discount hardware stores or wholesale companies.

In the near future, the San Leandro City Council will consider a development application to convert two existing vacant buildings, formerly a manufacturing plant and warehouse for Caterpillar Tractor Company, to a two-story retail, office, warehouse and light manufacturing complex. The project site is approximately 3-4 miles north of Faria Brothers. The developer, Pacific Union, proposes to convert the existing two buildings as follows: 293,000 square feet of retail space, 45,000 square feet of bulk retail space (furniture and appliances), 266,000 square feet of light industrial space, 65,000 square feet of office space, 146,000 square feet of warehouse space and 92,000 square feet of common area.

One of the prospective tenants is a "Costco" store. It would utilize 103,000 square feet of space. As indicated in the Costco prospectus which you have provided us, Costco Wholesale Corporation operates a chain of wholesale cash and carry membership warehouses which sell nationally branded merchandise at low prices to businesses purchasing primarily for commercial use or resale. The company's merchandise selection and marketing programs are targeted towards business customers. The company also sells to individuals who are members of selected employee groups. As further indicated in the prospectus, the company maintains a standardized inventory that falls within the following four major categories of items:

Food (including dry and perishable foods and institutionally packaged foods) which comprise 33% of sales for the fiscal year ending September 1, 1985;

Sundries (including candy, snack foods, health and beauty aids, tobacco, alcoholic beverages, soft drinks and cleaning and institutional supplies) comprising 26% of sales;

Hardlines (including major appliances, video and audio tapes, electronics, tools, office supplies, furniture, automotive supplies and small appliances) comprising 28% of sales; and

Softlines (including apparel, linens, cameras, jewelry, housewares, books and small appliances) comprising 13% of sales.

Costco purchases on a competitive cost basis, stocking different products at different times.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision if the decision would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on, among others, any business entity in which the public has a direct or indirect investment worth \$1,000 or more. (Section 87103(a).)

In the present situation, Mr. Faria owns an investment interest in Faria Brothers which is worth \$1,000 or more. Accordingly, he may not participate in any decision which will have a reasonably foreseeable material financial effect on Faria Brothers.

Whether an effect on a business entity in which an official has an investment interest will be considered material depends on the financial size of the business entity. (Regulation 18702.2.) In discussions with Michael Riback of your office,^{2/} it was determined that the test applicable to Faria Brothers provides that the effect of a decision on Faria Brothers will be considered material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g)(1),
(2) and (3).

^{2/} Mr. Riback indicated that Faria Brothers did not have sufficient net tangible assets or net income to meet the standards set out in Regulation 18702.2(f).

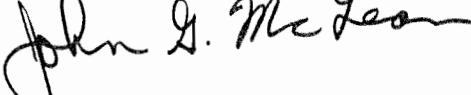
Steven R. Meyers
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We do not have sufficient facts before us to determine whether the City Council's decision to allow the development containing the Costco store to occur will have a material financial effect on Faria Brothers as a result of increased or decreased sales. If Mr. Faria concludes that it is reasonably foreseeable^{3/} that the opening of the Costco store at that location would result in an increase or decrease in sales revenues of \$10,000 or more annually for Faria Brothers, he must disqualify himself. If such an effect is not reasonably foreseeable, he may participate in the decision.

If you would like to discuss this further, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths,
General Counsel

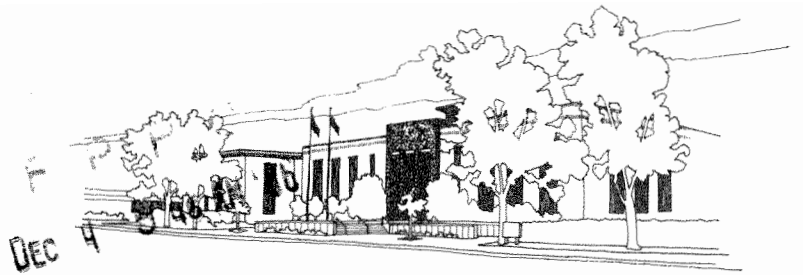


By: John G. McLean
Staff Counsel

DMG:JGM:km

^{3/} An effect is reasonably foreseeable if there is a "substantial likelihood" that it will occur. Certainty is not required; however, if the effect is but a "mere possibility," it is not considered reasonably foreseeable. (Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, Dec. 4, 1976, copy enclosed.)

City of San Leandro
Civic Center, 835 E. 14th Street
San Leandro, California 94577



Office of City Attorney 415-577-3361

December 1, 1986

Legal Division
Fair Political Practices Commission
P.O. 807
Sacramento, CA 95804

Re: Request for Advice - Government Code § 83114

Dear Sir or Madam:

This office has been requested by San Leandro City Councilman John E. Faria to obtain written advice from the Fair Political Practices Commission pursuant to § 83114.

Mr. Faria is a thirty-four percent owner in Faria Brothers Hardware, Inc. Mr. Faria's brother also owns thirty-four percent interest in the hardware store and his father owns a thirty-two percent interest. Faria Brothers had gross sales of approximately \$1.5 million in 1985. The primary product line carried by Faria Brothers is commercial and industrial hardware and specialty hard goods not generally stocked by discount hardware stores or wholesale companies. Approximately \$80,000 in annual gross sales comes from the "blacksmithing" activity conducted on the premises. This activity would not be conducted by a discount or wholesale hardware operation.

Within the next few months, the San Leandro City Council will consider a development application to convert two existing vacant buildings, formerly a manufacturing plant and warehouse for Caterpillar Tractor Company, to a two-story retail, office, warehouse and light manufacturing complex. The project is located at the intersection of Davis Street (State Route 112) and Warden Avenue/Timothy Drive. The project site is approximately 3-4 miles north of Faria Brothers Hardware. Pacific Union proposes to convert the existing two buildings as follows: 293,000 square feet of retail, 45,000 square feet of bulk retail (furniture and

Legal Division, FPPC

Re: Request for Advice - Government Code § 83114

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appliances), 266,000 square feet of light industrial, 65,000 square feet of office, 146,000 square feet of warehouse and 92,000 square feet of common area. One of the prospective tenants is a "Costco" store. It would utilize 103,000 square feet of space. As indicated in the attached Costco Prospectus, Costco Wholesale Corporation operates a chain of wholesale cash and carry membership warehouses which sell nationally branded merchandise at low prices to businesses purchasing primarily for commercial use or resale. The company's merchandise selection and marketing programs are targeted towards business customers. The company also sells to individuals who are members of selected employee groups. As further indicated in the Prospectus, the company maintains a standardized inventory that falls within the following four major categories of items:

food (including dry and perishable foods and institutionally packaged foods) which comprise 33% of sales for the fiscal year ended September 1, 1985;

sundries (including candy, snack foods, health and beauty aids, tobacco, alcoholic beverages, soft drinks and cleaning and institutional supplies) comprising 26% of sales;

hardlines (including major appliances, video and audio tapes, electronics, tools, office supplies, furniture, automotive supplies and small appliances) comprising 28% of sales; and

softlines (including apparel, linens, cameras, jewelry, housewares, books and small appliances) comprising 13% of sales.

Costco purchases on a competitive cost basis, stocking different products at different times.

Pacific Union has not entered into leases with any tenants at this time. A review of Mr. Faria's Form 721 reveals no investments, interests in real property, or income attributable to either Costco or Pacific Union and we are informed that as of this writing there are no such interests.

Based on these facts, is Councilman Faria required to disqualify himself from making or participating in the making of a decision of the San Leandro City Council concerning a planned development permit application for a project which would include a Costco warehouse store?

Legal Division, FPPC

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Your prompt attention to this matter is appreciated. Please contact me if I can provide any additional information.

Very truly yours

A handwritten signature in dark ink, appearing to read "Steve R. Meyers", with a long horizontal flourish extending to the right.

Steven R. Meyers
City Attorney

SRM:MSR:dp

Attachment

cc: John E. Faria, Councilman



California Fair Political Practices Commission

December 10, 1986

Steven R. Meyers
San Leandro City Attorney
Civic Center
835 E. 14th Street
San Leandro, CA 94577

Re: 86-325

Dear Mr. Meyers:

Your letter requesting advice under the Political Reform Act was received on December 8, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
cc: John E. Faria